

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Petition of Bell Atlantic Telephone Companies
for Forbearance from Regulation as
Dominant Carriers in Delaware, Maryland,
Massachusetts, New Hampshire, New
Jersey, New York, Pennsylvania, Rhode
Island, Washington, D.C., Vermont and Virginia.

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CC Docket No. 99-24
DA 99-224

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**COMMENTS
of the
GENERAL SERVICES ADMINISTRATION**

GEORGE N. BARCLAY
Associate General Counsel
Personal Property Division

MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

GENERAL SERVICES ADMINISTRATION
1800 F Street, N.W., Room 4002
Washington, D.C. 20405
(202) 501-1156

Economic Consultants:

Snaveley King Majoros O'Connor & Lee, Inc.
1220 L Street, N.W., Suite 410
Washington, D.C. 20005

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Summary

Bell Atlantic is asking the Commission to forego application of the rate structure and level rules in Parts 61 and 69, as well as tariffing rules, for all special access services throughout its operating area in 11 states and the District of Columbia. Although the company does not identify the specific rules that it would cut, the proposals would have the effect of dismantling the price cap system, at least for special access services.

On a positive note, GSA urges the Commission to adopt the proposal to forebear from applying tariff filing rules for these services. Increased flexibility for filing tariffs and deaveraging rates will increase the overall level of competition, reduce prices, and provide additional benefits to end users.

On the other hand, GSA disagrees with Bell Atlantic's other proposals. While Bell Atlantic provides "demonstrations" of competition in its service areas, the Petition does not contain significant quantitative data, such as market shares, or even a systematic qualitative analysis of the impact of competition in the respective regions. Moreover, to the extent that specific information is available, it is clear that, at least in the foreseeable future, competition will be concentrated in the metropolitan areas and several major interstate corridors.

In evaluating an application by a carrier under price cap regulation for less surveillance, it is important to note that the existing rules do not limit rate reductions for special access services. Thus, the price cap carriers do not require relief from the price cap rules in order to respond to competition. Moreover, the existing rules permit price cap carriers to implement different special access rates in different "density pricing zones" that they can define with few limitations. Therefore, if the present rules were eliminated, as requested, a carrier such as Bell Atlantic could target price increases for the many areas with little or no competition, and hold prices constant or reduce them where competition is indeed a significant threat.

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Island, Washington, D.C., Vermont and Virginia.

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**COMMENTS
of the
GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Public Notice ("Notice") released on January 21, 1999. The Notice invites comments and replies on a Petition by the Bell Atlantic Telephone Companies ("Bell Atlantic") asking the Commission to forbear from applying the rate structure, rate level and tariff filing rules for special access services in 12 jurisdictions. Bell Atlantic states that its Petition satisfies the criteria for forbearance contained in Section 10 of the Telecommunications Act of 1996 because the company lacks market power for special access services in those jurisdictions.¹

I. INTRODUCTION

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the

¹ Notice, para. 1, citing Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("Telecommunications Act").

responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. The FEAs require a wide array of interexchange and local telecommunications services throughout the nation. From their perspective as end users, the FEAs have consistently supported the Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

Bell Atlantic's Petition requests relief from regulatory surveillance in the "twelve state jurisdictions" identified in the caption of the case.² These jurisdictions comprise the entire service area of the company with the exception of two states — Maine and West Virginia.

Special access services encompass traditional "private line" services provided to end users, as well as dedicated transport facilities provided to interexchange carriers. Special access services employ facilities connecting end users with switching centers and the Points of Presence ("POPs") of interexchange carriers, and facilities between POPs, or between a POP and a central office or tandem switch. Primarily, special access services are used by business customers, including the Federal government and state governments, as well as interexchange carriers.³

There are various types of special access services, and many options for users in most locations. For example, Bell Atlantic provides special access services in both analog and digital formats. Digital data speeds range from 2.4 kilobits per-second ("Kbps") to 4.8 gigabits per-second ("Gbps").⁴

² Petition, p. 1. The caption lists only 11 jurisdictions, but Bell Atlantic subsequently explains that "New York" also includes its service area in Greenwich, Connecticut. *Id.*, p. 2, n. 2.

³ *Id.*, Attachment C, para. 13.

⁴ Petition, Attachment B, p. 2.

In major markets, the most prevalent special access services are the "high capacity" services provided at DS-1 (1.544 Mbps) and DS-3 (45 Mbps) data speeds.⁵ As many as 24 voice grade circuits can be combined into a 1.544 megabits per-second ("Mbps") DS-1 circuit. Government agencies and other users employ DS-1 and DS-3 services to transmit larger volumes of voice and data traffic among multiple locations, but they may also employ additional special access services such as DS-0 single voice grade lines in other applications. The Petition addresses "special access services" without designation of type, data speed, or customer size, so that the proposals encompass all special access services contained in Bell Atlantic's interstate tariffs.

Bell Atlantic provides three affidavits to address the basis for its requests:

- Affidavit of Robert J. McDonnell, which contains (1) descriptions of the competition in each jurisdiction for which Bell Atlantic requests forbearance; and (2) "profiles" of six carriers competing with Bell Atlantic;
- Affidavit of Michael R. McCullough, which presents descriptions of special access services offered by Bell Atlantic, and the nature of the competition for these services; and
- Affidavit of Karl McDermott and William E. Taylor, which (1) describes conditions for regulatory forbearance from an economic standpoint and (2) explains why, from Bell Atlantic's perspective, forbearance is appropriate and in the public interest.

These statements are Attachments A, B and C to the Petition, respectively.

The carrier's discussions show that there is significant potential for competition in providing dedicated services in all of the major metropolitan areas that the carrier serves. However, to protect end users and ensure that more competition develops, it is necessary to balance the extent of competition against the fact that this carrier retains significant market power for special access services and other services

⁵ *Id.*

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⁵ *Id.*

throughout its operating area. On balance, GSA believes that the Commission should grant the requests by incumbent local exchange carriers ("LECs") to relax tariff filing rules. However, the Commission should continue to apply the rate structure and level rules.

II. RELAXATION OF TARIFF FILING REQUIREMENTS SHOULD PROVIDE OPPORTUNITIES FOR MORE COMPETITION TO DEVELOP.

Although the Commission should continue to enforce pricing rules for special access services, the Commission should adopt the proposal by Bell Atlantic, or similar proposals by other incumbent carriers, to forebear from applying tariff filing rules for these services.⁶ Increased flexibility for filing tariffs and deaveraging rates will increase the overall level of competition, reduce prices, and provide additional benefits to end users.

Relaxation of tariffing rules will help the company to respond to requests for bids released by government agencies and other business users. To participate effectively in competitive bidding opportunities, carriers must be able to present clear and timely responses to requests for proposals. Moreover, the carrier must be able to submit responses with assurance that regulatory authorities will not subsequently nullify the terms of offers, or place any barriers to the performance of contracts. In addition, the carrier must have the flexibility to respond with commitments to provide any service, or combination of services, at rates, terms and conditions that may differ considerably from those published in its general tariffs. The only necessary limitations on the prices, terms and conditions for contract services are that these services are not cross-subsidized by monopoly ratepayers, or that they do not impair services provided to ratepayers or otherwise conflict with the public interest.

⁶ Bell Atlantic's proposals concerning tariffing rules are presented at pages 2-3 of its Petition.

Competitive LECs are not subject to tariff filing requirements. Tariffing rules that apply to Bell Atlantic, but not to its competitors, could potentially affect the company's flexibility in acting quickly in response to requests for proposals. Moreover, tariff requirements on Bell Atlantic may reveal the company's bidding ranges and price strategies to potential competitors. Therefore, GSA urges the Commission to remove the tariffing requirements for these services.

Increased flexibility for Bell Atlantic to participate in competitive bidding for telecommunications services has many benefits. From the standpoint of a government agency inviting bids, a wider response to requests for proposals will lead to lower prices and more service options. From Bell Atlantic's standpoint, the ability to participate in competitive bidding procedures will provide more opportunities for serving larger business users. Moreover, contracts benefit all of Bell Atlantic's ratepayers, because any services provided at prices above incremental costs make a contribution to the company's common facilities costs and overheads.

III. FORBEARANCE FROM RATE STRUCTURE AND RATE LEVEL RULES WOULD ELIMINATE VITAL CONTROLS OVER CHARGES FOR SPECIAL ACCESS SERVICES.

Bell Atlantic petitions for relief in the 12 jurisdictions from the rate structure rules in Part 69 and the rate level rules in Part 61 that apply to the special access services.⁷ In addition, the carrier seeks the ability to file tariffs on one-day's notice without cost support or other documentation.⁸

The company does not designate the sections, subsections or specific rules that it wishes to eliminate. However, since Parts 61 and 69 set forth the price cap plan and filing requirements for price cap carriers, rules concerning rate structure, rate level,

⁷ Petition, p. 2.

⁸ *Id.*, p. 3.

and tariff filing constitute nearly the entirety of these parts of Chapter I, Title 47 of the Code of Federal Regulations.

Parts 61 and 69 contain rules addressing the computation of allowable charges, including provisions governing the apportionment of investments and expenses among services. Since rate structure and level are integral to the entire price cap framework, a Petition for forbearance from rate structure and level rules is a request to forebear from application of any element of the price cap plan now applicable to special access services in the designated jurisdictions.

For example, Part 69, which is titled "Access Charges," has several major sections. Subpart A contains rules governing the filing of access service tariffs, while Subparts B and C contain rules governing the computation of rates and charges for interstate services. Subparts C, D, E, and F contain rules for the apportionment of investments and expenses among services, as well as rules governing determination of the revenue requirement for the common line rate element.

Sections 69.114 and 69.115 of Subpart B deal specifically with special access services. Paragraph 69.114(a) requires companies subject to price cap regulation to establish appropriate sub-elements for the equipment and facilities that are assigned to the Special Access element for the purpose of apportioning costs. Paragraph 69.114(b) requires that charges for the sub-elements be designed to produce the total annual revenue that is equal to the projected annual revenue requirement for the Special Access element. Paragraph 69.114(d) requires that charges for all individual elements be set to reflect cost differences among the respective sub-elements.

All of these important rules in Part 69 would be affected by a request for forbearance from the "rate structure" provisions. Thus, if the proposals were adopted, the incumbent carrier would have authority to establish its rate structures and prices for

individual special access rate elements solely at its own discretion, without regard for costs or earnings levels.

Moreover, proposals by Bell Atlantic, or any other price cap carrier, that the Commission forbear from enforcing the "rate level" provisions of Part 61 basically remove the Special Access service from regulatory surveillance. For example, Sections 61.42 61.43 and 61.45 through 61.48 of Part 61 set forth, in detail, the price cap system applicable to local exchange carriers such as Bell Atlantic electing this form of regulation for its interstate services. The rules in these sections specifically address special access services. Paragraph 61.42(d)(1) requires local exchange carriers subject to price cap regulation to establish a basket for common line rate elements including *inter alia* the special access rate elements identified in Paragraph 69.114 noted above. Moreover, Sections 61.45 through 61.48 contain the formula for the price cap index, and the rules for the application of this index, the service band index, and other price cap rules to the basket containing the Special Access element.

Since the price cap system constrains the pricing levels for services for all local exchange carriers electing this form of regulation, Bell Atlantic's request to forbear from application of the "rate level" rules in Part 61 would necessarily remove special access services from the surveillance by the Commission. Indeed, if the company's requests were granted, the company would have complete flexibility to design its special access services, combine or eliminate rate elements, set individual rates and charges, and establish aggregate revenue levels for special access services with no constraints. Correspondingly, end users and other carriers requiring these services from Bell Atlantic would have no protection, apart from the forces of the competition actually present in the region.

IV. THE COMMISSION SHOULD NOT GRANT BELL ATLANTIC'S PROPOSALS TO ABSTAIN FROM ENFORCING PRICING RULES.

A. Bell Atlantic provides little data on the present extent of competition in its service area.

To describe the competition that it faces in providing special access services, the Petition contains "demonstrations" of the competition in each of the jurisdictions, as well as profiles of six competitors. The Petition does not contain significant quantitative data, such as market shares, or even a systematic qualitative analysis of the impact of the competition in the respective regions.

At the outset, Bell Atlantic asserts that it employs a "conservative measure" of the presence of competitors.⁹ The selected measure was "addressability," which by definition denotes whether competitors can reach special access customers.¹⁰ However, "addressability" is not a conservative measure in the sense that it provides a lower bound on the extent of actual competition. In fact, just the opposite is true, since addressability measures the potential market penetration.

The state-by-state reviews of competition are primarily forecasts for the future. For example, the Massachusetts analysis begins with the assertion that competing carriers "have the ability to offer service to 92 percent of Bell Atlantic's special access demand in the state."¹¹ Among the competitors in that state, MCI WorldCom Brooks is "currently installing fiber" in Chicopee and Holyoke.¹² According to Bell Atlantic, "Expansion to Amherst and Northampton will follow."¹³

⁹ *Id.*, Attachment A, p. 2.

¹⁰ *Id.*

¹¹ *Id.*, Attachment A, Exhibit 5, p. 1.

¹² *Id.*, p. 2.

¹³ *Id.*

The discussions of competition in other states are also general. For example, the Petition notes that competing carriers “have the ability to offer service to 91 percent of Bell Atlantic’s special access demand in New Jersey.”¹⁴ One of the largest competitors, AT&T/TCG, allegedly completed construction of its network in 1993.¹⁵ Nevertheless, Bell Atlantic identifies only one switch operated by this competitor in the state, and asserts that AT&T/TCG is planning to install another switch at another New Jersey location in the future.¹⁶ According to Bell Atlantic, another competitor called Connectiv is “also expanding its network” to serve six specific cities and counties in New Jersey and six places in Maryland.¹⁷

To provide additional information about its competition, Bell Atlantic provides six “profiles” of major competitors — AT&T/TCG, MCI WorldCom, Hyperion Telecommunications, Intermedia, Level 3, and E.spire.¹⁸ The descriptions of these companies are broad, and not focused on their activities competing with Bell Atlantic’s special access services, or even confined to services in the states where Bell Atlantic operates. For example, the Petition states that AT&T acquired Teleport Communications (“TCG”), the largest competitive LEC and one of the most experienced competitive access providers in the nation for \$11.3 billion in 1998.¹⁹ Much of the material concerning this competitor, and the additional competitors, are synopses of analyses performed by the financial community, which are required to take a broad national perspective.

¹⁴ *Id.*, Attachment A, Exhibit 6, p. 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*, p. 4.

¹⁸ *Id.*, Attachment A, Appendices 1 through 6.

¹⁹ *Id.*, Appendix 1, p. 1.

In fact, some of the documentation of competitors' activities contradicts the demonstrations for individual states. For example, in the exhibit concerning Virginia, Bell Atlantic cites competition from Hyperion Telecommunications, explaining that the carrier has used a Lucent 5ESS host switch in Charlottesville since 1995.²⁰ However, the Appendix describing Hyperion reports that Charlottesville is not served by Bell Atlantic.²¹

B. Elimination of pricing and rate structure rules would remove protections needed by end users and interconnected carriers.

Bell Atlantic's general and mainly anecdotal presentation does not justify forbearance from pricing rules that protect end users and foster more competition. Proposals by incumbent carriers to significantly forebear from applying the rate structure and pricing rules would eliminate controls over the prices of private line services employed by the company's end users and the charges for transport facilities needed by competitors to serve their own customers. These controls are vital because the incumbent LECs control the vast majority of local access facilities that are used to originate and terminate interstate messages and provide dedicated private lines.

According to a report prepared by the Commission's Industry Analysis Division, the Bell Atlantic companies enjoyed interstate rates-of-return greater than 14 percent in 1997.²² Most of the LECs' interstate revenues are derived from access charges on interexchange messages and the end links for interexchange dedicated private lines. Consequently, the excessive interstate earnings of the LECs are associated with access rate structures that do not reflect the underlying access costs.

²⁰ *Id.*, Attachment A, Exhibit 109, p. 2.

²¹ *Id.*, Attachment A, Appendix, 3, p. 3.

²² Industry Analysis Division, *Trends in Telephone Service*, July 1998, Table 14.1.

As GSA explained in its Comments in the *Price Cap Performance Review* last year, excessive access charges have caused end users to pay too much for interexchange telecommunications services.²³ Moreover, high access charges impede open competition by placing unnecessary financial burdens on potential competitors.²⁴ Furthermore, excessive access charges can result in the formation of a pool of resources that incumbent LECs can employ to support attempts to forestall potential competitors from deploying their own services.²⁵

The Commission should not relax the existing procedures for regulating prices for interstate services provided by the incumbent LECs. In fact, as GSA explained, the prospect that increases in competition in the foreseeable future will be sufficient to drive access charges to economic costs is so slight that the Commission should employ a prescriptive approach as a backstop to price cap regulation.²⁶ In evaluating this Petition, or any similar petition, GSA urges the Commission to reject any recommendations to provide incumbent LECs with even greater pricing flexibility than they enjoy at the present time. Indeed, examination of the existing rules shows that the carrier is basically seeking authority for price increases rather than price reductions to meet competitive threats.

²³ In the Matter of Access Charge Reform, Price Cap Performance Review of Incumbent Local Exchange Carriers, and Tariffs Implementing Access Charge Reform, CC Docket No. 96-262, (*"Price Cap Performance Review"*), Additional Comments of GSA, October 26, 1998, pp. 4-7.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*, Additional Reply Comments of GSA, November 9, 1998, pp. 12-15.

V. THE PROPOSED RULE CHANGES WOULD ALLOW BELL ATLANTIC TO IMPLEMENT UNLIMITED RATE INCREASES FOR USERS WITHOUT COMPETITIVE ALTERNATIVES.

A. The carrier now has the ability to reduce charges without price cap constraints.

Bell Atlantic's request for forbearance from the rate level and structure rules in Parts 61 and 69 is, in effect, a request for permission to implement rate increases without regard to the constraints in the price cap framework, because the company already has authority to implement reductions in special access charges. In fact, because of the provisions of Part 61 concerning "density pricing zones," any price cap LEC is now able to implement special access rate reductions that are directly targeted to local competitive conditions.

Under the existing rules, there are no lower limits on the charges for special access services for LECs under price caps, such as Bell Atlantic.²⁷ For price cap carriers, the rules limit only increases in charges for service categories and sub-categories within a market basket.

Moreover, the present rules permit LECs to establish a reasonable number of density pricing zones within each study area to be used for pricing special access services.²⁸ The LECs electing price cap regulation may charge different rates for special access and switched transport services in different zones.²⁹ Density zone rates are subject to the maximum (but no minimum) price constraints in Part 61.³⁰ If the Commission adopts Bell Atlantic's proposal to forbear from applying the rate level

²⁷ Rule § 61.47(e) and 61.47(g)(4).

²⁸ Rule 69.123(a).

²⁹ Rule 69.123(e)(2).

³⁰ Rule 61.47(h).

rules in Part 61, the company would be able to target rate reductions through the use of density pricing zones, and have no constraints on rate increases at all.

B. Rate increases could be specifically targeted to places where there is little competition.

Since competition is concentrated in metropolitan areas, an incumbent carrier with a large and diverse service area would have ample opportunities to employ these geographically disaggregated pricing strategies. The concentration of competition is shown by the "State Demonstrations" including the "Competitive Network" maps in the exhibits for the respective jurisdictions.

For example, the exhibit for Maryland shows competition in that state in Baltimore City, Baltimore County, Montgomery County, Prince Georges County, Howard County, Cecil County, Anne Arundel County, and the Salisbury area. Thus, according to Bell Atlantic, competitors have the capability to provide services in the state's two largest metropolitan areas, plus the Annapolis area, the I-95 and I-70 corridors, and a very small part of the Eastern shore.³¹ There is no competitive presence in southern Maryland, or western Maryland, or almost all of the area east of the Chesapeake Bay.

Competitors are present in even a smaller fraction of Bell Atlantic's service area in New York state. According to Bell Atlantic, there is a competitive presence throughout New York City, in western Long Island and Westchester County, as well as Albany, Binghamton, Buffalo, Syracuse and other localities along the New York Thruway.³² Even in very densely populated New Jersey, Bell Atlantic's discussion indicates that competition is concentrated along the Turnpike corridor, and the

³¹ *Id.*, Exhibit 9.

³² *Id.*, Exhibit 4. The Petition also references competitive networks in Rochester, New York. However, the Bell Atlantic companies do not serve the Rochester area.

proximate areas, including Bergen, Camden, Essex, Hudson, Mercer, Middlesex, Monmouth, Passaic and Union counties.³³ There is no claim of competition in the entire southeastern third of the state, except for Atlantic City.

Moreover, according to the Commission's rules, the only constraint on the identification of pricing zones boundaries is that they must "be designed to reasonably reflect cost-related characteristics, such as the density of total interstate traffic in central offices located in the respective zones."³⁴ Since the cost-related characteristics for the incumbent carrier will usually be very different in the areas where competition exists and the areas where there is little or no competition, the carrier will specify zone boundaries to reflect these distinctions. If the present rules were eliminated, Bell Atlantic could target price increases for these areas without competition — where end users have no alternatives — and hold prices constant or reduce them where competition is a significant threat.

³³ *Id.*, Exhibit 6.

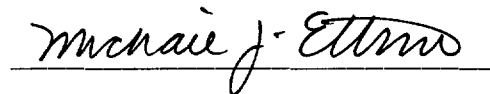
³⁴ Rule 69.123(b).

VI. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Comments.

Respectfully submitted,

GEORGE N. BARCLAY
Associate General Counsel
Personal Property Division

A handwritten signature in cursive script, reading "Michael J. Ettner", is written over a horizontal line.

MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

GENERAL SERVICES ADMINISTRATION
1800 F Street, N.W., Rm. 4002
Washington, D.C. 20405
(202) 501-1156

March 18, 1999

CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 18th day of March, 1999, by hand delivery or postage paid to the following parties.

The Honorable William E. Kennard,
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Harold Furchtgott-Roth,
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Susan Ness,
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C 20554

The Honorable Michael K. Powell
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C 20554

Editorial Offices
Telecommunications Reports
1333 H Street, NW, Room 100-E
Washington, DC. 20005

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W. TW-A325
Washington, D.C. 20554

International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20036

Richard B. Lee
Vice President
Snively King Majoros
O'Connor & Lee, Inc.
1220 L Street, N.W., Suite 410
Washington, D.C. 20005

Chief
Competitive Pricing Division
Federal Communications Commission
Suite 518
1919 M Street, N.W.
Washington, D.C. 20554

Michael J. Ettner